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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 6 - 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Petition of Ameritech Corporation)
to Remove Barriers to Investment in Advanced)
Telecommunications Capability)
)

CC Docket No. 98-32

COMMENTS OF
ICG TELECOM GROUP, INC.

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SUMMARY

Ameritech argues in its petition that certain provisions set forth in Section 251 and 271 of the Telecommunications Act of 1996 (the “Act”) should not apply to interLATA transport of packet-switched data. ICG submits that Ameritech’s petition amounts to another stance in its full court press against having to comply with the local competition requirements of Sections 251. Further, Ameritech’s petition is nothing short of a calculated attempt to leapfrog directly into the provision of in-region interLATA service for a substantial and growing portion of Ameritech’s total regulated business. Ameritech seeks to make an end-run around statutory requirements that are at the heart of the deregulatory, pro-competitive environment that Congress envisioned when it enacted the Act.

The Act gives each RBOC its own in-region “homework” assignment with respect to interconnection, unbundling, and resale. The Act further provides that an RBOC that submits its completed homework assignment correctly is eligible for a passing grade and may “graduate” to providing in-region interLATA service. Ameritech has not yet even come close, however, to completing its homework assignment and receiving a passing grade. Given this reality, there is no possible way that Ameritech can claim it is eligible to graduate at this time. At best, Ameritech would get an “incomplete” at this juncture.

Ameritech’s petition also represents an attempt to shift its focus — and that of the Commission — away from Ameritech’s local competition obligations, set forth in Section 251, to issues that allow the RBOC to maximize profits at the expense of its would-be competitors and their potential customers. Given its consistent inability to meet

the requirements of Section 251, whether intentional or not, Ameritech should not be permitted to divert its energy, capital, and other resources to new projects, such as those outlined in its petition.

ICG recites here the specific details of its own experiences with Ameritech's shortcomings to underscore the lack of progress and foot dragging with which would-be competitors continue to meet, including: (1) reciprocal compensation; (2) inside wire; (3) unilateral attempt to diminish negotiated performance standards; (4) discriminatory treatment; (5) number administration; (6) unbundled network elements; (7) resale; and (8) service outages.

Ameritech has not made the requisite showing for the grant of a waiver. Nor has Ameritech come close to making a case that is compelling enough to warrant forbearing from imposing regulatory restrictions across the entire industry, which is what "forbearance" would accomplish. Because Ameritech has not made a showing that it is complying with the requirements of the Act, particularly in the face of contrary evidence submitted by ICG, the Commission should deny the relief sought by Ameritech in its petition.

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COMMENTS OF ICG TELECOM GROUP, INC.

Pursuant to the Commission's Public Notice, DA 98-470, released March 6, 1998, ICG Telecom Group, Inc. ("ICG"), hereby respectfully submits its comments regarding Ameritech Corporation's ("Ameritech") Petition to Remove Barriers to Investment in Advanced Telecommunications Capability ("Ameritech Petition")¹ in which Ameritech requests that the Commission "forbear" from imposing a number of regulatory restrictions to encourage widespread deployment of advanced telecommunications capability². Ameritech argues that certain provisions set forth in Section 251 and 271 of the Telecommunications Act of 1996 (the "Act") should not apply to interLATA transport of packet-switched data. In its petition, Ameritech requests that the Commission take the following actions: (1) modify or eliminate the restrictions on local access and transport areas ("LATAs") boundaries; (2) modify the separation requirements of Section 272 of the

¹ Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability, CC Docket No. 98-32, filed March 5, 1998.

² Id. at 2.

Act to replace them with the separation requirements established in the Commission's Fifth Report and Order in the Competitive Carrier Proceeding; and (3) clarify that an affiliate that satisfies the modified separation requirements set forth in Ameritech's petition is not an incumbent local exchange carrier ("ILEC") for Section 251(c) purposes³.

ICG, as the largest "facilities-based" competitive local exchange carrier ("CLEC") that is not affiliated with a major interexchange carrier ("IXC"), has an interest in these proceedings. ICG is a leading national CLEC with extensive fiber-optic networks. ICG offers local, long distance and enhanced telephony and data services in the states of California and Colorado, as well as the Ohio Valley and parts of the Southeastern United States.

On January 22, 1998, ICG merged with NETCOM On-Line Communication Services, Inc. ("NETCOM"), a leading provider of Internet services. NETCOM is one of the leading Internet services providers in the country, and as of December 31, 1997, was providing service to approximately 540,000 customers and over 12, 000 professional businesses.

Although Ameritech argues that it is neither asking for complete deregulation of the technologies inherent in its request for relief nor attempting to avoid its obligation to make bottleneck facilities available to its CLEC competitors,⁴ ICG submits that Ameritech's petition amounts to another stance in its full court press against having to comply with the

³ Id. at 2-3.

⁴ Id.

local competition requirements of Sections 251. Further, Ameritech's petition is nothing short of a calculated attempt to leapfrog directly into the provision of in-region interLATA service for a substantial and growing portion of Ameritech's total regulated business. In this guise, Ameritech seeks to make an end-run around statutory requirements that are at the heart of the deregulatory, pro-competitive environment that Congress envisioned when it enacted the Act.

* * * * *

ICG continues to maintain that the Section 271 interLATA checklist "carrot" is one of the few effective levers available for the Commission to use in prying open the local RBOC monopoly. Therefore, it is critical to ensure that use of this lever be maximized consistent with the terms of the statute. In simple terms, the Act gives each RBOC its own in-region "homework" assignment with respect to interconnection, unbundling, and resale. The Act further provides that an RBOC that submits its completed homework assignment correctly is eligible for a passing grade and may "graduate" to providing in-region interLATA service. The scope of the RBOCs' homework assignment is clear and unambiguous — the RBOCs must open their in-region doors to local competition by facilitating interconnection, allowing resale, and offering unbundled network elements ("UNEs"). As documented below, however, Ameritech has not yet even come close to completing its homework assignment and receiving a passing grade. Given this reality, there is no possible way that Ameritech can claim it is eligible to graduate at this time. At best, Ameritech would get an "incomplete" at this juncture.

Ameritech's petition also represents an attempt to shift its focus — and that of the Commission — away from Ameritech's local competition obligations, set forth in Section 251, to issues that allow the RBOC to maximize profits at the expense of its would-be competitors and their potential customers. Given its consistent inability to meet the requirements of Section 251, whether intentional or not, Ameritech should not be permitted to divert its energy, capital, and other resources to new projects, such as those outlined in its petition. Under the Communications Act, the RBOC "students" are not permitted to choose their assignments, just as they are not allowed to grade themselves. Ameritech must do what the law requires before proceeding to other energy-and-resource-diverting projects. For these reasons, ICG urges the Commission to deny Ameritech's petition.

I. AMERITECH HAS NOT MET THE PREREQUISITES TO RECEIVE THE RELIEF IT REQUESTS

To keep the focus on the local competition that the Act requires, ICG points out a significant number of specific steps that Ameritech should take — *is required to take* — before the Commission should consider any petition for relaxation of the rules to which the RBOCs are required to adhere. Ameritech's failure to comply with many of the statutory requirements has been pointed out previously and repeatedly by those, including ICG, with first-hand experience with Ameritech's practices (or lack thereof, as the case may be). ICG associates itself with the comments of other parties that make legal and policy arguments about why it is inappropriate to grant Ameritech the relief it requests. For its part, ICG recites here the specific details of its own experiences with Ameritech's shortcomings to

underscore the lack of progress and foot dragging with which would-be competitors continue to meet.

Reciprocal Compensation. Although ICG has a Public Utilities Commission of Ohio ("PUCO")-approved interconnection agreement with Ameritech, Ameritech has refused to pay negotiated reciprocal compensation to ICG. Prior to July 1997, Ameritech payments to ICG included payment for local traffic handled on behalf of Internet service providers. Beginning in August 1997, however, ICG received correspondence from ICG that indicated that Ameritech would no longer pay such compensation, in apparent violation of both the interconnection agreement and PUCO orders. Ameritech followed through with its decision not to pay, and as of November 1997, Ameritech was in arrears to ICG for over one million dollars. Pursuant to the terms of the Ameritech-ICG interconnection agreement, ICG requested that Ameritech deposit the contested payments into an interest bearing escrow account, and requested escalation and resolution of the dispute as specified in the parties' interconnection agreement.⁵ As a result of Ameritech's actions, ICG filed a complaint with the PUCO.⁶ The matter was brought before the PUCO for hearing on February 17, 1998, and a decision by the PUCO on the matter is still pending.

⁵ Eventually the money was placed by Ameritech into an escrow account, as requested by ICG.

⁶ See Complaint of ICG Telecom Group, Inc. Against Ameritech Ohio Regarding the Payment of Reciprocal Compensation, Case. No. 97-1557-TP-CSS (filed November 26, 1997).

Inside Wire. In November 1997, ICG initiated discussions with Ameritech regarding access to building cable, which Ameritech contended it owned, for ICG to provide service to individual tenants in multi-story buildings. Ameritech indicated that ICG was required to file a Bona Fide Request ("BFR") for approval requesting, in essence, sub-loop unbundling in order to gain access to building cable. Further, Ameritech stated it would require a BFR for each tenant location in each building. According to Ameritech, the timetable for processing each BFR is approximately four months. Ameritech told ICG that its initial BFR would take an additional 45 days on top of the already onerous four month processing timetable, at an initial cost of \$6,000. The need for ICG and other CLECs to file and secure approval of a BFR for access to building cable at tenant locations causes at least a four month delay, and is clearly a stall tactic on the part of Ameritech. ICG has filed a complaint at the PUCO regarding this matter.⁷ A decision in the matter is still pending.

Unilateral Attempt to Diminish Negotiated Performance Standards. ICG and Ameritech entered into an interconnection agreement which was approved by the PUCO and which provides for liquidated damages in the event Ameritech fails to meet specified performance standards. Thereafter, in Case No. 96-1175-TP-ORD, the PUCO set minimum telephone service standards ("MTSS") with liquidated damages for violating MTSS. Subsequently, ICG discussed with Ameritech its willingness to negotiate an amendment to the agreement based on any requirements created by the PUCO's adoption

⁷ See Complaint of ICG Telecom Group, Inc. Against Ameritech Ohio Regarding Inside Wiring, Case No. 97-328-TP-CSS (filed February 23, 1998).

of the MTSS. Rather than pursuing a simple amendment, Ameritech took the opportunity to attempt to substantially alter provisions of the PUC-approved interconnection agreement. Ameritech's proposed changes would have altered the existing liquidated damages provisions and performance standards unrelated to the PUCO's MTSS order. Ameritech suspended negotiations with ICG when it realized that it would be unable to reach an agreement on its proposed changes. Ameritech then filed a tariff attempting to utilize the tariff filing procedures to amend the interconnection agreements standards. ICG and others have protested the tariff and a proceeding is pending.

Discriminatory Treatment. ICG has encountered a number of situations where it has appeared that Ameritech is engaged in a deliberate attempt to discriminate against ICG and ICG's customers, and to impede and impair ICG from operating in a competitive manner in Ameritech's territory. Examples of such discriminatory treatment include but are not limited to the following situations:

1. A major potential customer of ICG ordered several DS-1s. Based on Ameritech's claim that it requires a site survey and detailed engineering, the interval for receiving a firm order commitment ("FOC") should take 24 to 48 hours. However, no such surveys or engineering are required by Ameritech for an FOC for service ordered by an end user customer directly. Moreover, Ameritech delays in processing the DS-1s order by ICG for its potential customer ranged from 6 to 28 days. As a result of these delays, the customer cancelled at least 12 pending orders for service from ICG. These delays are resulting in continuing injury to ICG and its actual and potential customers.
2. After scheduling several service orders for ICG customers, Ameritech unilaterally decided to give more than 62% of its field technicians an extra day off on the day *before* Thanksgiving, thereby impacting service commitments to ICG customers. Ameritech's practice of allowing unannounced holidays without advance notice to CLECs disrupts cut-overs, service visits, etc.

3. From November 26 through November 28, 1997, calls from Ameritech central offices could not complete calls to certain ICG NXX's.
4. From May 1997 through November 1997, Ameritech only made service order commitments to ICG on a monthly basis ranging from 0% to 27% in the Cleveland and Akron, Ohio markets. ICG filed a complaint with the PUCO to have the issue addressed.

Number Administration. ICG has consistently encountered difficulty in obtaining additional NXX codes from Ameritech. The problem of obtaining additional NXX codes from Ameritech is apparently so common that the PUCO directed its staff to conduct an investigation and to develop a recommendation on issues surrounding NXX assignment. A staff report on the investigation is pending.

Unbundled Network Elements. ICG has experienced ongoing problems in installing service for its customers. For example, Plus 1 Executive Suites, Inc. elected to switch its service from Ameritech to ICG during April 1997. ICG encountered problems obtaining T-1s as unbundled elements to provide service to the customer. ICG also encountered numerous problems with Ameritech in attempting to provide the service. As of August 1, 1997 — four months later — Ameritech still had not approved the request for service and could not provide ICG with an installation date. On August 28, 1997, Ameritech arrived at the customer's location to install the service, without any prior notification to either ICG or the customer of their intention to install the service at that time. The customer was not at the facility at the time Ameritech arrived, and as a result the service could not be installed. This in turn resulted in the installation being delayed until September 8, 1997.

Additional problems ensued, including the fact that Ameritech could not locate service records on the customer's working numbers. As such, the due date was pushed back again, this time until October 2, 1997. Additional delays occurred and, to date, a complete cut-over has not been successfully accomplished due to Ameritech-caused problems and delays. These actions on the part of Ameritech show that Ameritech puts its CLEC competitors on the back-burner when it comes to installation requests, thereby discouraging the growth of local competition.

Resale. During the past year, Ohio went through a "fresh look" period, which allowed competitive companies to attempt to assume ILEC customer contracts. During that period, a number of problems were encountered which hindered ICG's attempt to enter the market. For example, a customer was under contract with Ameritech for 7 Centrex lines. The customer later added 13 additional lines, outside of the terms of the contract. When ICG attempted to obtain and resell the contract, Ameritech countered by forcing the customer to pay a "buy out" for the 13 additional lines.

Another example of an ongoing problem occurs when ICG discusses service with a customer under contract with Ameritech. Once ICG contacts the customer and asks for a "fresh look" view of a contract, Ameritech immediately contacts the customer and offers better rates under a long term contract. These actions clearly undermine the intention of the PUCO's "fresh look" policy, and serve only to hurt CLECs in competing with ILECs and hinder the growth of local competition.

Service Outages. ICG has experienced numerous problems with service outages related to Ameritech's network. In each case, customers have perceived the problem to be caused by ICG and not Ameritech, since ICG is the customer's local carrier. A clear example of this issue relates to a service outage in Ohio during January 1998 when Ameritech incorrectly re-routed trunk groups between Ameritech's tandem and ICG's switch. As a result, Ameritech's customers could not call ICG's end users. The problem was found by an ICG switch technician the next morning. Ameritech's service to ICG has the effect of leading customers to believe that ICG cannot deliver the service requested, and that the service received by the customer from ICG is poor. Again, this ultimately discourages local competition because the customer is left with the impression that service from a CLEC is substandard.

As shown above, ICG's experiences alone with Ameritech demonstrate that Ameritech has a long way to go before it can legitimately claim to have complied with the Section 251 and 271 mandates of the Act. For this reason, it would not be wise public policy for the Commission to consider Ameritech's request for relief until such time as Ameritech can demonstrate that it has completed its assignment under the Act.

II. AMERITECH HAS NOT SHOWN A BASIS FOR GRANTING IT RELIEF

Ameritech's petition for relief is essentially a request for waiver of particular rules in an individual-case situation, although Ameritech does not style its request in this manner.⁸

⁸ ICG notes that other RBOCs have sought similar relief, which would not be required if the relief sought by any one of these petitioners applied across the country.

ICG maintains, as outlined below, that Ameritech has not made the requisite showing for the grant of such a waiver. Nor has Ameritech come close to making a case that is compelling enough to warrant forbearing from imposing regulatory restrictions across the entire industry, which is what “forbearance” would accomplish.

As the foregoing “laundry list” illustrates, the would-be competitors of Ameritech have faced considerable obstacles in trying to do business with the RBOC, despite the fact that ICG and others seek to do only what the Act entitles them to do: interconnect with Ameritech’s network in a way that will allow them to compete. Whatever air of cooperation Ameritech may foster on occasion is largely undercut by inaction or its outright refusal to act on the particulars of interconnection.

To receive the waiver of the statutory requirements and Commission rules that it seeks, Ameritech must demonstrate good cause for the grant of such relief.⁹ The Commission has found good cause to consist of two factors: (1) the underlying purpose of the rule will not be served, or would be frustrated by application in a particular case; and (2) the unique facts and circumstances of a particular case *render application of the rule inequitable*, unduly burdensome, or otherwise contrary to the public interest.¹⁰ There can

⁹ If the Commission were to treat Ameritech’s petition as one requesting “forbearance” of imposing certain regulatory restrictions under Section 251 and 271 of the Act, then resolution of the petition would be relatively easy. Ameritech has not made a showing that would warrant the Commission’s forbearance (under Section 10 of the Act) from imposing certain restrictions for all parties implicated by Section 251 and 271, which would be the consequence of forbearance. Nor can the requisite showing be made by incorporating similar petitions filed by other interested parties.

¹⁰ See 47 C.F.R. § 22.19(a)(i)-(ii).

be no question but that denial of the waiver is consistent with the Congressional purpose in requiring compliance with Section 251. As for the second factor, the Commission can consider equities to a particular party in deciding whether to grant a waiver.¹¹ In its evaluation of special circumstances in a particular instance, the Commission may look to considerations of equity. In its petition, Ameritech has advanced no affirmative equitable grounds upon which grant of a waiver would be appropriate. Nor has it shown that a denial of relief would be inequitable.¹²

It is on equitable grounds, in particular, that Ameritech has not only failed to carry its burden of demonstrating compliance with Section 251, but does not appear to have tried to comply fully, given the evidence outlined above. Certainly, it is axiomatic that merit badges and gold stars are given only to those who successfully *complete* and achieve the highest scores on their assignment. Currently, to continue the analogy, Ameritech is in no position even to be graded on its performance under Sections 251 or 271, let alone receive the special recognition for its performance that a grant of a waiver would signify. Instead, Ameritech needs to be sent back to work with a message that its assignment is long overdue. The Commission and Ameritech's would-be competitors continue to wait.

* * * * *

¹¹ See Telerama, Inc. v. FCC, 419 F. 2d 1047 (6th Cir. 1969); United Television Co. v. FCC, 514 F. 2d 279, 282 (D.C. Cir. 1975).

¹² Here, grant of Ameritech's petition would be inequitable to the parties who have complied with the provisions of Section 251, while Ameritech has not. "[F]undamental fairness to those who comply with the provisions of this rule mandates stringent compliance." Florida Cellular Mobil Communications Corp. v. FCC, 28 F. 3d 191, 198 (D.C. Cir. 1994).

As discussed above, Section 271 gives the Commission invaluable tool to ensure that the RBOCs take all of the steps required by Section 251 to make local competition a reality, not just an aspiration. ICG's experiences with Ameritech richly demonstrate the necessity of the Commission keeping a vigilant eye on what transpires at ground zero in Ameritech's region, as well poking and prodding the RBOC along the way. Section 271 provides much of the prod, and it should not be tossed aside for *any* interLATA provision of service, no matter how "targeted and limited," particularly in the absence of a showing of unmet needs. Therefore, because Ameritech has not made a showing that it is complying with the requirements of the Act, particularly in the face of contrary evidence submitted by ICG, the Commission should deny the relief sought by Ameritech in its petition.

Respectfully submitted,



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Dated: April 6, 1998

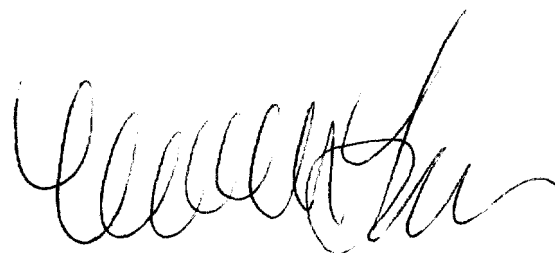
CERTIFICATE OF SERVICE

I hereby certify that on April 6, 1998, a copy of the foregoing Comments of the ICG Telcom Group, Inc. was sent by first class United States mail, postage prepaid, to the following:

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